Jan'y 18 1878
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S. 760

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 793.

THE UNITED STATES, APPELLANT,

vs.

ANDREW M. MOORE.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 3, 1877.

Jan'y 28 1878
Reversed
Bill Stipulation

SUPREME COURT OF THE UNITED STATES.

No. 793.

THE UNITED STATES, APPELLANT,

vs.

ANDREW M. MOORE.

APPEAL FROM THE COURT OF CLAIMS.

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1 Court of Claims, December term, 1875.

ANDREW M. MOORE
vs.
THE UNITED STATES. } No. 11375.

I. *Petition.—Filed May* 3, 1876.

Andrew M. Moore, respectfully complaining, shows to this honorable court and states that he is a citizen of the United States, and an officer in the Navy of the United States, and that heretofore, on the 19th day of April, A. D. 1869, he was duly appointed and commissioned an assistant surgeon in the Navy of the United States, and has ever since held the office of assistant surgeon in the Navy, and the rank of assistant surgeon and passed assistant surgeon.

And the claimant further alleges that after he had served more than three years from the date of his appointment and commission as assistant surgeon, and during the year 1872, he was duly examined as to his qualifications for surgeon of the Navy, and passed said examination before, and was approved by a board of officers duly appointed and qualified for that purpose, who duly reported said result to the honorable Secretary of the Navy, who approved said report, and by letter notified him accordingly, and that during all the time since said notice was received by him, to wit, from February 25th, 1874, he has served with the rank and pay of passed assistant surgeon in the United States Navy.

And the claimant avers that since the expiration of five years from the date of his commission and the commencement of his service as assistant surgeon in the Navy of the United States, to wit, from April 19th, 1874, he became and has been entitled to pay as compensation, from the defendants, under and by virtue of the premises, and section fifteen hundred and fifty-six of the Revised Statutes, at the rate of two thousand and two hundred dollars per annum, when on duty at
2 sea, and two thousand dollars when on shore-duty. And that notwithstanding the premises and the statute aforesaid, the defendants have failed and refused to pay him any other or larger sum than eighteen hundred dollars per annum when on shore-duty, and two thousand dollars per annum when on duty at sea.

And that heretofore, on or about the first day of February, A. D. 1876, he made proper application to the Second Comptroller of the Treasury for the allowance and payment of said two hundred dollars per annum allowed him by law, above what had been paid to him as aforesaid; and that said Second Comptroller refused to allow or pay the same, and rendered an adverse decision thereon, which is hereto attached and marked "Exhibit A," and made a part of this petition.

And the claimant avers that he has at all times borne true allegiance to the Government of the United States, and has not in any way, voluntarily or otherwise, aided, abetted, or given encouragement to the rebellion against said government.

Wherefore claimant demands judgment against the defendants for the sum of four hundred dollars.

JOHN B. CLARK, J'R,
SANBORN & KING,
Claimant's Attorneys.

APRIL 19TH, 1876.

DISTRICT OF COLUMBIA,
County of Washington, ss:

John B. Clarke, being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above-entitled action, and that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that he believes the facts as stated in said petition.

JOHN B. CLARK, JR.

Sworn to and subscribed before me this 3d day of May, A. D. 1876.
[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

3 Post-office address of claimant, care of Secretary of the Navy, Washington, D. C.
Post-office address of attorneys, Washington, D. C.

In the matter of the claim of Passed Assistant Surgeon Andrew M. Moore, United States Navy, for longevity pay, or increased pay for second five years' service from the date of his appointment:

D'r Moore states that he was appointed an assistant surgeon on the 19th April, 1869, and is still acting under the appointment then received. On the 19th April, 1872, he had completed his three years' service, and became entitled to examination for promotion to a surgeoncy. He passed on his first examination. His certificate of approval is dated . He claims that on the 19th April, 1874, he had completed his first five years of service under his said appointment, and is entitled to receive the $200 additional pay per annum from that date.

M'r Delano, chief of division of naval accounts, submits the question whether the five years' service, after which the additional pay accrues, shall be reckoned from the date of the original appointment of D'r Moore as assistant surgeon, or from the date when he passed his examination and received his certificate as a passed assistant surgeon; and M'r Delano states that the custom has been to reckon from the latter date.

The provisions of law under which this claim is made, and which are to be considered in deciding the question submitted, are these:

"The active-list of the Medical Corps of the Navy shall consist of fifteen medical directors, fifteen medical inspectors, fifty surgeons, and one hundred assistant surgeons." (Rev. Stats., sec. 1368.)

"All appointments in the Medical Corps shall be made by the President, by and with the advice and consent of the Senate." (Rev. Stats., sec. 1369.)

"The officers * * on the active-list of the Navy * * shall be entitled to receive annual pay at the rates herein stated." * *

4 "Passed assistant surgeons, passed assistant paymasters, and first assistant engineers, during the first five years after date of appointment, when at sea, $2,000; on shore-duty, $1,800; on leave, or waiting orders, $1,500; after five years from such date, when at sea, $2,200; on shore-duty, $2,000; on leave or waiting orders, $1,700." "Assistant surgeons, assistant paymasters, and second assistant engineers, during the first five years after date of appointment, when at

sea, $1,700; on shore duty, $1,400; on leave, or waiting orders, $1,000; after five years from such date, when at sea, $1,900; on shore-duty, $1,600; on leave or waiting orders, $1,200." (Rev. Stats., sec. 1556.)

It is admitted that in the cases of assistant paymasters, and of second assistant engineers, when they have passed examination and become passed assistant paymasters and first assistant engineers respectively, new or second appointments and commissions from the President are granted to them as such passed assistants and first assistants; and that in the case of assistant surgeons, when they pass examination and become passed assistant surgeons, no such new or second appointments or commissions from the President are given to them as passed assistants. In the case of assistant surgeons, when they have passed examination, the Secretary of the Navy, if he approves the action of the board of naval examiners, furnishes a certificate to that effect, which entitles the holder to the advanced position, rank, and pay of passed assistant surgeon.

In this state of the law and practice, the argument of the claimant is that as the law provides that passed assistant surgeons shall be entitled to the increased longevity pay "after five years from the date of 'appointment;'" that is, the first appointment as assistant surgeon, the increased pay must accrue and be allowed at and after five years from the date of the original appointment as assistant surgeon; inasmuch as that is the only "appointment" received.

It must be admitted that such construction of the words of that clause of the statute alone is a reasonable and fair one; and if it were consistent with other portions of the act, would be a necessary and unavoidable one. But the rule of construction is that we must "construe one part of an act by another, so as to make all its parts harmonious." (Dwarris.) "Where the intention is clear, too much stres' should not be laid on the strict and precise signification of words." (Smith.) "Where a word in a statute is susceptible of two meanings, it should be so understood and construed that, if possible, no clause or sentence will be superfluous, void, or insignificant." (Kent.)

In the present case, if we hold the word "appointment" to mean, in every case, only the original Presidential appointment and commission, as the claimant contends, then the two clauses that provide for the pay of assistants and passed assistants are inconsistent with each other, and each clause is absurd in itself. It is true in one sense that all the assistant surgeons, both those that have passed and those that have not passed the examination, are assistants, and both together constitute the one hundred assistant surgeons provided for by the act. But it is equally true and clear that Congress intended that they should be divided into two distinct classes—assistants simply and passed assistants—with different relative rank and different pay.

"Passed assistant surgeons [shall have] the relative rank of lieutenant or master."

"Assistant surgeons [shall have] the relative rank of master or ensign." (Rev. Stat., sec. 1474.)

"Passed assistant surgeons [shall receive annual pay] when at sea $2,000 during the first five years after date of appointment," &c.

"Assistant surgeons [shall receive annual pay] when at sea $1,700 during the first five years after date of appointment," &c. (Rev. Stat., sec. 1556.)

If "date of appointment" means in both cases date of original appointment by the President as assistant surgeons, then the clause which pre

scribes a lower rate of pay and inferior relative rank to assistant surgeons is substantially void and of no effect, because the moment an assistant passed his examination he could demand the pay of passed assistant from the date of his original appointment as assistant; for the act provides that an assistant who has passed examination shall receive the pay and rank of passed assistant "during the first five years after the date of his appointment."

5½ The whole scope, purview, and intention of the act, therefore, will not permit me to lay so much stress on the strict and precise signification of the word "appointment." The commission from the President is regarded as the evidence of the appointment of an assistant surgeon, and the certificate of the Secretary of the Navy may be regarded as the evidence of the appointment of a passed assistant surgeon. It is this certificate which entitles him to claim his rank among the officers of the Navy, and which entitles him to demand his increase of pay from the accounting-officers.

It is my opinion, therefore, that D'r Moore became a passed assistant surgeon at the date fixed by the Secretary of the Navy, in his certificate approving the action of the examining-board of naval surgeons; that he is entitled to the pay and relative rank of passed assistant surgeon from and after that date; and that he will be entitled to receive his increased-service pay—his longevity pay—from and after five years from that date.

C. C. CARPENTER,
Comptroller.

SECOND COMPTROLLER'S OFFICE,
February 7th, 1876.

6 II. *Traverse.—Filed May* 16, 1876.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of four hundred dollars, says that they are not indebted to the said claimant in the said sum of money nor any part thereof.

And as to so much of the said petition as avers that the said claimant at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

7 III. *Plea of limitation to petition.—Filed May* 19, 1876.

Now come the defendants, by their Attorney-General, and say that the claimant herein should not further have or maintain suit against the defendants, for the reason that the petition of the claimant was not filed in this court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Assistant Attorney-General.

8 IV. *Findings of fact and the pro forma order of the court.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. On the 12th of April, 1869, the claimant was appointed and commissioned an assistant surgeon in the Navy of the United States.

II. On the 24th of February, 1874, after examination, he was found qualified for promotion to the grade of surgeon; and he was, on the following day, notified by the Secretary of the Navy that the report of the board of examiners, before whom he had appeared for examination, was approved by the Department, and that from that date he
9 would be regarded as a passed assistant surgeon; and from that date up to the date of the institution of this suit, May 3, 1876, he received pay as passed assistant surgeon in the first five years after appointment as such.

III. From the 12th of April, 1874, till May 3, 1876, the claimant's service was as follows:

On shore-duty 438 days, for which he was paid at the rate of $1,800 per annum; on leave or waiting orders 323 days, for which he was paid at the rate of $1,500 per annum.

Upon the foregoing facts the court, being equally divided in opinion, holds, pro forma, for the purposes of an appeal, that the claimant is entitled to the rate of pay established by law for a passed assistant surgeon, after five years from the date of appointment; that is to
10 say, when on shore-duty, at the rate of $-,000 per annum, and when on leave or waiting orders, at the rate of $1,700 per annum; and that the claimant is therefore entitled to receive, for the 761 days specified above, the additional sum of $409.95, for which judgment will be entered.

By the court.

Richardson, J., did not take part in the consideration of this case.

JOHN RANDOLPH,
Ass't Clk C't of Claims.

11 V. *Final judgment.*

At a Court of Claims held at the Capitol, in the city of Washington, on the 29th day of June, A. D. 1877, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Andrew M. Moore, claimant, do have and recover of and from the United States the sum of four hundred and nine dollars and ninety-five cents ($409.95).

By the court.

12 VI. *Application for allowance of appeal and order allowing the same.*

From the judgment rendered in the above-entitled cause on June 29, 1877, in favor of claimant, the defendants, by their Attorney-General, on the 14th day August, 1877, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed August 14, 1877.

AT CHAMBERS.

Ordered that the appeal be allowed as prayed for.
August 14, 1877.

C. D. DRAKE,
Chief Justice.

13 In the Court of Claims.

ANDREW M. MOORE
vs.
THE UNITED STATES. } No. 11375.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office August 14, 1877, and of the order of the chief-justice of said court allowing the same; of the findings of fact by the court, and the pro forma order for the purpose of an appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twenty-seventh day of September, A. D. 1877.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 793. The United States, appellant, vs. Andrew M. Moore. Court of Claims. Filed 3rd October, 1877.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

UNITED STATES
v.
AND. M. MOORE. } No. 793.

APPEAL FROM THE COURT OF CLAIMS.

Argument for United States.—Submitted under Rule XX.

Another pro forma judgt. for $200. (Rec. 5, fol 9)

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

UNITED STATES
v.
AND. M. MOORE. } No. 793.

APPEAL FROM THE COURT OF CLAIMS.

ARGUMENT FOR UNITED STATES; SUBMITTED UNDER RULE XX.

STATEMENT.

The claimant was appointed assistant surgeon in the Navy April 12, 1869, and passed his examination for promotion February 21, 1874. The report of the examining board was approved by the Department February 24, 1874, but no new appointment or commission was given. He served as assistant surgeon from April 12, 1869, to February 24, 1874, and as passed assistant from February 24, 1874, to the present time; but during all the time, up to the 12th April, 1876, he received only the pay provided for assistants and passed assistants during

the *first* five years of service. His claim is for the lon gevity pay for service after five years, from April 12, 1869, when he first entered the Navy, such pay to begin April 12, 1874 (completion of five years after date of original appointment), and is claimed by this petition to April 12, 1876, two years, at $200 a year, $400.

The question is, What date is the one from which is to be computed the "first five years" during which "passed assistant surgeons" receive $200 a year less than the salary to which they become entitled after the lapse of this term? Do these years begin to run when he first enters the Navy, or from the time the Secretary approves the record of his having passed a satisfactory examination, the officer's "written work," or examination-paper, being transmitted to the Secretary with the report of the examining board? In other words, is the position of "passed assistant surgeon" a different office or rank from that of assistant surgeon? The statutory provisions bearing upon the subject are these:

"The active list of the medical corps of the Navy shall consist of fifteen medical directors, fifteen medical inspectors, fifty surgeons, and one hundred assistant surgeons." (R. S., sec. 1368.) "No person shall be appointed surgeon until he has served as an assistant surgeon at least two years on board a public vessel of the United States at sea, nor until he has been examined and approved for such appointment by a board of naval surgeons designated by the Secretary of the Navy." (R. S., sec. 1370.) "The commissioned officers and warrant officers on the active list of the Navy of the United States, and the petty officers, seamen, ordinary seamen, firemen, coal-heavers, and employès in the Navy shall be entitled to receive annual pay at the rates herein

stated after their respective designations." * * * "Passed assistant surgeons, passed assistant paymasters, and first assistant engineers, during the first five years after date of appointment, when at sea, $2,000; on shore duty, $1,800; on leave or waiting orders, $1,500; after five years from such date, when at sea, $2,200; on shore duty, $2,000; on leave or waiting orders, $1,700." "Assistant surgeons, assistant paymasters, and second assistant engineers, during the first five years after date of appointment, when at sea, $1,700; on shore duty, $1,400; on leave or waiting orders, $1,000; after five years from such date, when at sea, $1,900; on shore duty, $1,600; on leave or waiting orders, $1,200." (R. S., sec. 1556.)

BRIEF.

The stress of claimant's argument is that, as section 1369 of the Revised Statutes says "all appointments in the medical corps shall be made by the President by and with the advice and consent of the Senate," and the transfer from the rank and pay of assistant surgeon to that of passed assistant surgeon is not evidenced by any new commission, nor submitted to the Senate for approval, it must not be considered as a new appointment, but simply as certifying a prescribed degree of proficiency in his profession."

Time does not permit us to do more than to say that if the promotion of assistant paymasters and second engineers is a new appointment the present must be so likewise. Indeed, every advancement in rank and increase of pay is a supposed recognition of the enhanced value of the services rendered and an increased capability. If the section (1369) applies, the consequence

contended for by no means follows. It is much more reasonable to argue that, in that case, Dr. Moore is not now, in law, a passed assistant surgeon because not yet appointed by the President with the advice and consent of the Senate to that position for which his passage of the examination showed him to be qualified. Nothing more will be added except (in an appendix) the opinion of the Second Comptroller, by which the action of the government in withholding the payment of the present claim has been guided.

EDWIN B. SMITH,
Assistant Attorney-General.

APPENDIX.

OPINION OF THE SECOND COMPTROLLER.

In the matter of the claim of Passed Assistant Surgeon Andrew M. Moore, United States Navy, for longevity-pay, or increased pay for second five years' service from the date of his appointment.

Dr. Moore states that he was appointed an assistant surgeon on the 19th of April, 1869, and is still acting under the appointment then received. On the 19th April, 1872, he had completed his three years' service, and became entitled to examination for promotion to a surgeoncy. He passed on his first examination; his certificate of approval is dated February 24, 1874. He claims that on the 19th of April, 1874, he had completed his first five years of service under his said appointment, and is entitled to receive the $200 additional pay per annum from that date.

Mr. Delano, chief of division of naval accounts, submits the question whether the five years' service, after which the additional pay accrues, shall be reckoned from the date of the original appointment of Dr. Moore as assistant surgeon, or from the date when he passed his examination and received his certificate as a passed assistant surgeon; and Mr. Delano states that the custom has been to reckon from the latter date.

The provisions of law under which this claim is made, and which are to be considered in deciding the question submitted, are these: * * *

[The statutes quoted in the foregoing brief are here recited.]

It is admitted that, in the cases of assistant paymasters and of second assistant engineers, when they have passed examination and become passed assistant paymasters and first assistant engineers, respectively, new or second appointments and commissions from the President are granted to them as such passed assistants and first assistants; and that in the case of assistant surgeons, when they pass examination and become passed assistant surgeons, no such new or second appointments or commissions from the President are given to them as passed assistants. In the case of assistant surgeons, when they have passed examination the Secretary of the Navy, if he approves the action of the board of naval examiners, furnishes a certificate to that effect, which entitles the holder to the advanced position, rank, and pay of passed assistant surgeon.

In this state of the law and practice the argument of the claimant is that, as the law provides that passed assistant surgeons shall be entitled to the increased longevity-pay "after five years from date of 'appointment,'"

that is, the first appointment as assistant surgeon, the increased pay must accrue and be allowed at and after five years from the date of the original appointment as assistant surgeon, inasmuch as that is the only "appointment" received.

It must be admitted that such construction of the words of that clause of the statute alone is a reasonable and fair one; and, if it were consistent with other portions of the act, would be a necessary and unavoidable one. But the rule of construction is that we must "construe one part of an act by another, so as to make all its parts harmonious." (Dwarris.) "Where the intention is clear, too much stress should not be laid on the strict and precise signification of words." (Smith.) "Where a word in a statute is susceptible of two meanings, it should be so understood and construed that, if possible, no clause or sentence will be superfluous, void, or insignificant." (Kent.)

[MEM. For an instance of different meanings given to the same word in different sections of the same statute, see United States *v.* Fisher (2 Cranch, 387.) E. B. S.]

In the present case, if we hold the word "appointment" to mean in every case only the original Presidential appointment and commission, as the claimant contends, then the two clauses that provide for the pay of assistants and passed assistants are inconsistent with each other, and each clause is absurd in itself. It is true in one sense that all the assistant surgeons, both those that have passed and those that have not passed the examination, are assistants, and both together constitute the one hundred assistant surgeons provided for by the act. But it is equally true and clear that Congress intended that they should be divided into two dis-

tinct classes—assistants, simply, and passed assistants—with different relative rank and different pay.

"Passed assistant surgeons [shall have] the relative rank of lieutenant or master." "Assistant surgeons [shall have] the relative rank of master or ensign." (R. S., sec. 1474.)

"Passed assistant surgeons [shall receive annual pay] when at sea, $2,000 during the first five years after date of appointment," &c. "Assistant surgeons [shall receive annual pay] when at sea, $1,700 during the first five years after date of appointment," &c. (R. S., sec. 1556.)

If "date of appointment" means in both cases date of original appointment by the President as assistant surgeons, then the clause which prescribes a lower rate of pay and inferior relative rank to assistant surgeons is substantially void and of no effect, because the moment an assistant passed his examination he could demand the pay of passed assistant from the date of his original appointment as assistant; for the act provides that an assistant who has passed examination shall receive the pay and rank of passed assistant "during the first five years after the date of his appointment."

The whole scope, purview, and intention of the act, therefore, will not permit me to lay so much stress on the strict and precise signification of the word "appointment." The commission from the President is regarded as the evidence of the appointment of an assistant surgeon; and the certificate of the Secretary of the Navy may be regarded as the evidence of the appointment of a passed assistant surgeon. It is this certificate which entitles him to claim his rank among the officers of the Navy, and which entitles him to demand his increase of pay from the accounting-officers.

It is my opinion, therefore, that Dr. Moore became a passed assistant surgeon at the date fixed by the Secretary of the Navy in his certificate approving the action of the examining board of naval surgeons; that he is entitled to the pay and relative rank of passed assistant surgeon from and after that date; and that he will be entitled to receive his increased service pay—his longevity pay—from and after five years from that date.

C. C. CARPENTER,
Comptroller.

SECOND COMPTROLLER'S OFFICE,
February 7, 1876.

NOTE.—If the Comptroller has not stated the correct construction, then it is respectfully again suggested that the true statement of the law is that Dr. Moore is not yet a passed assistant surgeon, and will not be until nominated by the President to the Senate, and there confirmed for that position.—E. B. S.

○

In the United States Supreme Court.

OCTOBER TERM, 1877.

UNITED STATES, Appellant,

vs.

ANDREW M. MOORE.

No. 793.

BRIEF AND ARGUMENT FOR APPELLEE.

SANBORN & KING,
Attorneys for Appellee.

WASHINGTON, D. C.:
W. M. STUART, PRINTER.
1878.

In the United States Supreme Court.

OCTOBER TERM, 1877.

No. 793.

UNITED STATES, APPELLANT,

vs.

ANDREW M. MOORE.

BRIEF AND ARGUMENT FOR APPELLEE.

The appellee (claimant in the Court below) was appointed an assistant surgeon in the Navy April 19th, 1869. He passed his examination for promotion February 21, 1874, and became a passed assistant surgeon from that time. He claims longevity pay as passed assistant surgeon from April 19th, 1874, being five years after date of his appointment. The provisions of law under which the claim is made are as follows:

"The active list of the medical corps of the Navy shall consist of fifteen medical directors, fifteen medical inspectors, fifty surgeons, and one hundred assistant surgeons."

Rev. Stats., sec. 1368.

"All appointments in the medical corps shall be made by the President, by and with the advice and consent of the Senate."

Rev. Stats., sec. 1369.

"No person shall be appointed surgeon until he has served as an assistant surgeon at least two years, on board a public vessel of the United States at sea, nor until he has been examined and approved for such appointment by a board of naval surgeons designated by the Secretary of the Navy."

Rev. Stats., sec. 1370.

"The officers * * on the active list of the Navy * * shall be entitled to received annual pay at the rates herein stated." * * "Passed assistant surgeons, passed assistant paymasters, and first assistant engineers, during the first five years after date of appointment, when at sea, $2,000; on shore duty, $1,800; on leave, or waiting orders, $1,500; after five years from such date, when at sea, $2,200; on shore duty, $2,000; on leave or waiting orders, $1,700." "Assistant surgeons, assistant paymasters, and second assistant engineers, during the first five years after date of appointment, when at sea, $1,700; on shore duty, $1,400; on leave, or waiting orders, $1,000; after five years from such date, when at sea, $1,900; on shore duty, $1,600; on leave or waiting orders, $1,200."

Rev. Stats., sec. 1556.

The question is, as to the construction of the phrase "date of appointment," in the clause fixing the pay of passed assistant surgeons; whether it means the date of original appointment as assistant surgeon or date of certificate that the examination has been passed. The latter date has been adopted by the Department as the true construction. The claimant, on the contrary, claims that the increased pay should be reckoned *not* from five years from the date of examination, but from five years from the date of original appointment.

The Second Comptroller says, in his decision rejecting the claim:

"It is admitted that in the cases of assistant paymasters, and of second assistant engineers, when they have passed examination and become passed assistant paymasters and first assistant engineers, respectively, new or second appointments and commissions from the President are granted to

them as such passed assistants and first assistants; and that in the case of assistant surgeons, when they pass examination and become passed assistant surgeons, no such new or second appointments or commissions from the President are given to them as passed assistants. In the case of assistant surgeons, when they have passed examination, the Secretary of the Navy, if he approves the action of the board of naval examiners, furnishes a certificate to that effect, which entitles the holder to the advanced position, rank and pay of passed assistant surgeon."

He admits that the construction asked by claimant is a reasonable and fair one, if this clause is considered alone; but attempts to rebut it by the suggestion that it is inconsistent with section 1474, which fixes a different relative rank to assistant surgeons and passed assistants. But there is no force in this reasoning. The fact that an officer passes from one grade to another does not warrant the inference that a new appointment is necessary for the purpose. The examination and his success in passing it, determine the grades, and the new relative rank follows as an incident.

The Comptroller also attempts a *reductio ad absurdum* by arguing that "if 'date of appointment' means in both cases date of original appointment by the President, as assistant surgeons, then the clause which prescribes a lower rate of pay, and inferior relative rank to assistant surgeons, is substantially void and of no effect, because the moment an assistant passed his examination, he could demand the pay of passed assistant from the date of his original appointment as assistant; for the act provides that an assistant who has passed examination shall receive the pay and rank of passed assistant, 'during the first five years after the date of his appointment.'" If this consequence really followed from the Comptroller's premises, we should certainly have claimed pay as passed assistant surgeon from the date of original appointment; but the argument is in itself absurd. The officer is not a passed assistant at all till he has passed the examination; and if our interpreta-

tion is correct, the clause means only that the pay of the passed assistant is to commence from the passage of the examination, but is to be regulated as to its amount by the "date of appointment." As there has been but one date of appointment, the only sound construction can be to reckon from that. We emphatically deny that "appointment" can in any instance mean the passage of an examination. It never has been so interpreted, and is not, in fact, capable of bearing such a construction. Were it necessary we could refer to many authorities defining what an appointment is; but any such labor is spared by the statute-book itself, which defines in section 1369 what shall be considered an appointment, viz:

"All *appointments* in the medical corps shall be made by the President, by and with the advice and consent of the Senate."

That the same word, used in the same title of the statute, and apparently in the same connection, should bear two entirely distinct and opposite meanings, is incredible. Yet if the Comptroller is to be believed, such was the intention of Congress. They say in one clause that appointments are to be by the President, and in another, in close juxtaposition, mean, by the same word, the passage of an examination and issuance of a certificate by a board.

On the other hand, the construction for which the claimant contends is just and reasonable. It harmonizes all parts of the statute, and gives no strained, unnatural, or repugnant interpretation to any word. Congress defines an appointment as the issuance of the commission by the President. Taking it in this sense, we interpret section 1556 to mean that assistant surgeons during first five years after date of their commission shall receive a certain compensation; after examination, and success therein, they become "passed" assistants, with a new relative rank, but without any re-appointment; and then, on completion of five years from "appointment"—that is, as defined by law,

appointment by President and Senate—they receive increased or longevity pay.

This construction is not only agreeable to the words of the statute, but to analogy in the case of the Army. Longevity pay there is dependent on length of service, not on length of time in a particular rank. (Secs. 1262 and 1263.) This is the theory of longevity pay, and will apply equally to the Army and Navy.

We will cite no further authorities in support of these positions, except two brief maxims from Dwarris on Statutes, (pp. 143, 144:)

"It is not permitted to interpret what has no need of interpretation. When an act is expressed in clear and precise terms, when the sense is manifest and leads to nothing absurd, there can be no reason not to adopt the sense which it naturally presents. To go elsewhere in search of conjectures in order to restrain or extinguish it is to elude it."

And—

"The office of interpretation is to bring the sense out of the words used, and not to bring a sense into them."

In this case Congress has used a word in one part of the statute, and in another has affixed a definite meaning to it. Shall we adopt this meaning as authoritatively laid down, or shall we affix a new and impossible meaning, as contrary to the ordinary use of words as it is to the statute itself? This is the sole question; and, without further remark, we leave its consideration to the Court.

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